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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957.

## No. 351

**HAROLD PARKER,**

Petitioner,

vs.

**UNITED STATES OF AMERICA,**

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit.

## Reply Brief Of Petitioner To Brief For The United States In Opposition.

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Now comes the petitioner and presents herewith his Reply Brief in opposition to the Brief of the United States in Opposition to petitioner's Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit, or so much thereof as the petitioner deems proper, and says, as follows:

## As To "Questions Presented."

Petitioner states that the adequate and correct statement of the "Questions Presented" is as stated in petitioner's Petition, and that the "Questions Presented" as set forth in the Government's Brief in Opposition are misleading as shown by examination of the "Questions Presented" in petitioner's Petition for Certiorari.

## As To "Statement."

The Brief for the United States in Opposition is misleading and inaccurate in the following respects:

a. The appearances of the petitioner before the January 20, 1955, Grand Jury, beginning on January 20, 1955, and including two subsequent appearances, constituted a single hearing in response to the original subpoena served on him.

b. The "Statement" in the Brief in Opposition asserts that, "Inter alia, on January 2 (20), the grand jury asked whether petitioner had been in New York in 1951, in order to determine whether he had met a Claude Murphy there." The testimony of the petitioner before the grand jury as submitted to the trial court nowhere discloses that the witness was asked such a question by the grand jury; nor does the indictment so charge (Exhibit B to Defendant's Motion to Dismiss Indictment; App. 30; Indictment, App. 6; Government's Exhibits 1B, 2B, 3B (withdrawn), and 4B). However, the petitioner did testify *on trial* that he had been asked by the grand jury if he had been to the Rawlings fight in New York (which took place in 1951) and had answered that he had, but that such questions and answers were not set forth in

the report of his grand jury testimony as submitted by the Government; he further identified assistant Government attorneys who were present when he so testified before the grand jury. These witnesses were not subsequently called by the Government to rebut his testimony on that point. (See "Statement of Facts" in petitioner's Petition, page 15).

The Government's "Statement" is correct in stating that the petitioner as a witness before the grand jury had not been advised on the occasion of his appearance on January 20, 1955, when he gave the alleged testimony upon which the counts of the indictment upon which he was convicted were based, and that he was advised and warned on the occasion of March 21, 1955.

**As To "Argument."**

1. The Government's "Argument" deals with situations in which immunity statutes are involved. The privilege against self-incrimination is not an immunity, and a question presented by the petitioner's Petition for a Writ for Certiorari is whether the Government in its administration of the grand jury gave adequate protection to the constitutional guaranty of the privilege against self-incrimination, particularly in the premises of the subpoena of the petitioner as a witness and in the requiring of his testimony when he was an unmistakable target of the investigation.

We refer to the statement of Circuit Judge Frank in *United States* v. *Scully*, 225 F. 2d 113, in dealing with the questions as to when warning is necessary under the circumstances of the petitioner's case, as follows:

"Were that rule applicable here, I would hold as follows:

> "(a) It would be improper to conjecture that the defendant, if he had been warned, might nevertheless have testified voluntarily.
>
> "(b) So, too, a conjecture that he knew his privilege; *Wood* v. *United States*, 75 U. S. App. D. C. 274, 127 F. 2d 265, 277-278; *Johnson* v. *Zerbst*, 304 U. S. 458, 464, 58 S. Ct. 1019, 82 L. E. 1461.
>
> "(c) If he gave answers before the grand jury without a warning, the error would not be cured by the fact that, desiring to explain those answers, he later voluntarily appeared, on advice of counsel, and testified before the grand jury."

It is unrealistic, and the Government is hardly forthright, when it contends that it was not the purpose of the Government to seek indictment of the petitioner upon the charges of the "convict-informer" Murphy, when it called the petitioner as a witness immediately after Murphy had testified. The indictment of the petitioner for perjury was an alternative resort, when the Government failed to find support for the "convict-informer's" charges, and the procedure was a clear abuse of the privilege against Self-incrimination.

2. The scope of grand jury investigation is not involved in the petitioner's contention that he should have been informed of the general subject matter of the grand jury investigation in order for him to judge "as to materiality." The standards of criminality as referred in petitioner's petition and the *Watkins* case are pertinent because the investigation is here used as a basis for criminal charges. Grand juries are a part of our legal system and our rules of fair play, common sense and respect for constitutional guaranties apply to grand jury

proceedings. Evidence unconstitutionally obtained cannot be used as the basis for criminal prosecution.

3. The petitioner again suggests that Congress intended that trial errors committed in the face of the jury should be weighed by Appeal Courts as to their effects upon the jury.

a. Does the Government seriously contend that where a witness gives oral testimony which is taken down in shorthand notes the original shorthand notes presented by the court reporter witness are not a proper subject of cross-examination when used as a basis for proof for perjury, and that cross-examination can be properly limited in this respect to whether the transcript conforms to the shorthand notes? As noted in the Government's Argument, the trial court first permitted cross-examination on the shorthand notes and then restricted it after cross-examination on a particular upon which the petitioner was charged and convicted showed a discrepancy requiring a longhand notation.

Other items in the Government's Brief in Opposition are sufficiently dealt with in the petition of the petitioner.

Respectfully submitted,

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